

1 McDERMOTT WILL & EMERY LLP
DAVID S. BLOCH, State Bar No. 184530
2 JOHN A. LEE, State Bar No. 229911
3150 Porter Drive
3 Palo Alto, CA 94304-1212
Telephone: 650-813-5000
4 Facsimile: 650-813-5100
Email: dbloch@mwe.com
5 jlee@mwe.com

6 Attorneys for Plaintiff
DIOPTICS MEDICAL PRODUCTS, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 DIOPTICS MEDICAL PRODUCTS, INC.,
a California corporation,

12 Plaintiff,

13 v.

14 BEI FRANCHISING, INC.,
15 a Michigan corporation,

16 Defendant.

Case No. C-06-02643 (MMC)

**CONSENT MOTION TO ENLARGE
TIME AND ORDER EXTENDING
CERTAIN DUE DATES AND
[PROPOSED] ORDER**

Date: September 15, 2006
Time: 9:00 a.m.
Courtroom: 7, 19th Floor
Before: Honorable Maxine M. Chesney

NOTICE OF MOTION AND MOTION

TO DEFENDANT BEI FRANCHISING AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 15, 2006 at 9:00 a.m. or soon thereafter as the matter may be heard in the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, 94102, plaintiff DIOPTICS MEDICAL PRODUCTS, INC., will, and hereby does, move this Court for an order to extend the date for BEI to answer Dioptrics's complaint and the date for the parties to: (i) meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan; (2) file ADR Certification Signed by Parties and Counsel; and (3) file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference. This consent motion will be based on the attached memorandum of points and authorities, the documents and records on file with the Court in this action, without oral argument as this motion is consented by defendant BEI Franchising, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

Dioptics Medical Products, Inc., (“Dioptics”) is the owner of several registered trademarks incorporating “Polar” in Trademark International Classification Code 009. On April 19, 2006 Dioptics filed suit against BEI alleging that BEI’s registered marks and graphics mark application infringed Dioptics’s Polar Family of Marks. *See* Complaint, ¶¶14-18. The parties have been in settlement negotiations and are close to finalizing a settlement agreement. Dioptics files this consent motion for an extension of the deadlines listed in the below chart.

BEI consents to this motion. Lee Decl, ¶ 2, Ex. A. The parties have not filed a joint stipulation because BEI's Counsel, Mr. Benjamin B. Reed, is not admitted to practice law in the State of California and is not admitted *Pro Hac Vice* in this proceeding.

| Date | Proposed Date | Event |
|-------------|----------------------|---|
| 08/14/2006 | 09/08/2006 | <ul style="list-style-type: none"> ○ Last day for Defendant BEI to answer Plaintiff Dioptics's complaint |
| 08/28/2006 | 09/08/2006 | <p>Last day to:</p> <ul style="list-style-type: none"> ○ meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan ○ file ADR Certification Signed by Parties and Counsel ○ file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference |

Accordingly, Dioptics's requests at the Court's earliest convenience that the Court grant Dioptics's motion to extend the due dates as indicated in the chart above, without the need for oral argument since BEI consents to this motion.

DATED: August 8, 2006

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

By /s/ John A. Lee
David S. Bloch
John A. Lee

Attorneys for Plaintiff
DIOPTICS MEDICAL PRODUCTS, INC.

[PROPOSED] ORDER

Good cause appearing therefore, it is hereby ORDERED all dates and deadlines are extended as indicated in the chart below.

| New Date | Event |
|------------|--|
| 09/08/2006 | <ul style="list-style-type: none"> ○ Last day for Defendant BEI to answer Plaintiff Dioptics's complaint |
| 09/08/2006 | Last day to: <ul style="list-style-type: none"> ○ meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan ○ file ADR Certification Signed by Parties and Counsel ○ file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference |

IT IS SO ORDERED.

DATED: August 9, 2006

Honorable Maxine M. Chesney, Judge
United States District Court

MPK 113036-1.070302.0028